IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
APPEAL FROM ORDER NO.628 OF 2005

Balkrishna Bhikaji Chopdekar — Appellant

Vs.

Municipal Corporation of
Greater Mumbai — Respondent

Mr.Harrinder Toor with Ms.Manjiri Chitnis for appellant.

Ms.Geeta Joglekar for respondent.

CORAM: B.H.MARLAPALLE,J.
July 06, 2005.

ORAL ORDER:

1. This appeal arises from dismissal of Notice of Motion No.4040 of 2001 moved in L.C.Suit No.4853 of 2001. The notice under section 351 of the MMC Act was issued on 24-5-2000 and after hearing the plaintiff final order was passed on 11-5-2001 by the Asst. Municipal Commissioner, P/North Ward directing the appellant to demolish the subject unauthorised structure located at Room No.5/19, Dube Panchal Estate, Laxman Nagar, Kurar Village, Malad (East). The said order came to be challenged in L.C. Suit No.4853 of 2001.

2. The trial Court considered the arguments advanced by the respective parties and noted that on 19-9-2001 ad-interim relief was refused. In the written statement filed by the respondent -

Corporation it was stated that the suit structure was demolished on 5/12/2001. In the rejoinder submitted by the plaintiff the issue of demolition was disputed and the trial Court noted that there was no material placed on record to show that the suit structure was not demolished on 5/12/2001 when the prayer for ad-interim relief was turned down on 19-9-2001 itself. A new ground was taken up before the trial Court viz. that the structure was covered by the protection granted by the State Government as per its policy. This was not the plea taken before the Municipal Corporation and it was noted that the Asst. Commissioner had held that the structure was not existing before the datum line of 1-4-1962 for the residential premises. It was then contended that the datum line was not applicable to the structure.

3. The reasoning given by the court below does not suffer from any errors and the impugned order cannot be held to be illegal on any count. The prima facie view taken by the court below, therefore, does not call for any interference.

4. The appeal is dismissed in limine.

(B.H.MARLAPALLE,J.)